



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 23, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lewis B. Stone, Esq., Treasurer
New York Republican Federal Campaign Committee
c/o Rogers & Wells
200 Park Avenue
New York, New York 10166

RE: MUR 4648
New York Republican Federal Campaign
Committee and Lewis B. Stone, as treasurer

Dear Mr. Stone:

On June 17, 1997, the Federal Election Commission found that there is reason to believe the New York Republican Federal Campaign Committee ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 432(h)(1), 434(b)(5)(A), (6)(B)(i), (6)(B)(v); and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 104.3(b)(3)(i), (viii), (ix), provisions of the Commission's regulations. The Commission further found reason to believe that the Committee and you, as treasurer, knowingly and willfully violated 2 U.S.C. § 434(b)(5)(A), (6)(B)(i), (6)(B)(v) and 11 C.F.R. § 104.3(b)(3)(i), (viii), (ix). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents and Order to Submit Written Answers must be submitted within 30 days of your receipt of this subpoena and order. Any additional materials or statements you wish to submit should accompany the response to the subpoena and order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena and order. If you intend to be represented by counsel, please

Celebrating the Commission's 20th Anniversary

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DEDICATED TO KEEPING THE PUBLIC INFORMED

advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

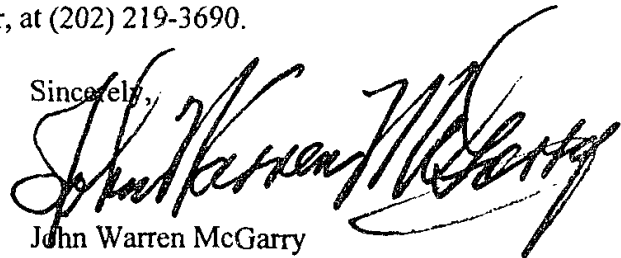
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



John Warren McGarry
Chairman

Enclosures
Subpoena and Order
Factual and Legal Analysis
Procedures
Designation of Counsel Form

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 4648

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

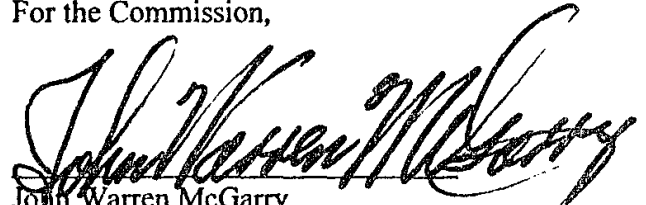
TO: Lewis B. Stone, Esq., Treasurer
New York Republican Federal Campaign Committee
c/o Rogers & Wells
200 Park Avenue
New York, New York 10166

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

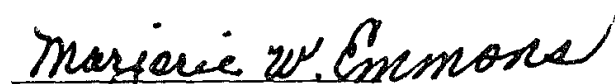
Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his
hand in Washington, D.C. on this 23rd day of June, 1997.

For the Commission,


John Warren McGarry
Chairman

ATTEST:


Marjorie W. Emmons
Secretary to the Commission

Attachments
Instructions
Definitions
Questions and Production of Documents

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1991 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Committee" shall mean the New York Republican Federal Campaign Committee.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

"1994 election cycle" shall mean the time period from January 1, 1993 through December 31, 1994.

"1996 election cycle" shall mean the time period from January 1, 1995 through December 31, 1996.

QUESTIONS AND PRODUCTION OF DOCUMENTS

1. Identify Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, Gregory V. Serio and Luther Mook. Other than the disbursements reported on the Committee's 1994 30-Day Post-General Report, describe each other time when you disbursed \$5,000 or more to any of these five individuals. Include in your descriptions the date and amount of the disbursements, and the purpose for disbursing the funds to the individuals.
2. Identify the Kings County Republican Committee and its treasurer. Identify all persons who made contributions to the Kings County Republican Committee during the 1994 election cycle. Include in your description the amount of each contribution and the date on which it was made.
3. Identify all other individuals to whom funds were disbursed in amounts of \$5,000 or more, during the 1994 election cycle. Include in your identifications the amount disbursed to each individual, the date on which the funds were disbursed, and the purpose for disbursing the funds to the individuals.
4. Identify all persons who were involved in the decisions to disburse funds of the Committee to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, Gregory V. Serio, Luther Mook and the Kings County Republican Committee, as reported on the Committee's 1994 30-Day Post-General Report, or as otherwise described in response to question 1. Identify all other persons who were aware of these decisions.
5. Identify Daryl Fox, J. Brendan Quinn, William D. Powers, Jason Powers, Kenneth Dippel and Lisa Herbst Ruggles. Other than the disbursements reported on the Committee's 1996 30-Day Post-General Report, describe each other time when you disbursed \$2,500 or more to any of these five individuals. Include in your descriptions the date and amount of the disbursements, and the purpose for disbursing the funds to the individuals.
6. Identify all other individuals to whom funds were disbursed in amounts of \$2,500 or more, during the 1996 election cycle. Include in your identifications the amount disbursed to each individual, the date on which the funds were disbursed, and the purpose for disbursing the funds to the individuals.
7. Identify all persons who were involved in the decisions to disburse funds of the Committee to Jeffrey T. Buley, Mary F. Obwald, Daryl Fox, J. Brendan Quinn, William D. Powers, Jason Powers, Kenneth Dippel and Lisa Herbst Ruggles, as reported on the Committee's 1996 30-Day Post-General Report, or as otherwise described in response to question 6. Identify all other persons who were aware of these decisions.
8. Produce all documents which mention or which otherwise refer or relate to the disbursements to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, Gregory V. Serio, Luther Mook and the Kings County Republican Committee, which were reported on the Committee's 1994 30-Day Post-General Report. Produce all documents which contain information regarding the persons to

whom Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, Gregory V. Serio, Luther Mook and the Kings County Republican Committee, were to distribute the funds disbursed to them. Identify all documents consulted in responding to this Subpoena and Order. Identify all individuals, not otherwise identified in response to any of the above questions, who have knowledge or information related to the answers to the above questions.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: New York Republican Federal Campaign MUR: 4648
Committee and Lewis B. Stone, as treasurer

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See 2 U.S.C. § 437g(a)(2).*

A. Applicable Law

Pursuant to 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i), a political committee must report the name and address of each person to whom an expenditure in excess of \$200 is made by that committee to meet an operating expense, together with the date, amount and purpose of such operating expenditure. Likewise, pursuant to 2 U.S.C. § 434(b)(6)(B)(i) and 11 C.F.R. § 104.3(b)(3)(viii), a political committee must report the name and address of each person who receives any expenditure from that committee in connection with an expenditure under 2 U.S.C. § 441a(d), together with the date, amount and purpose of any such expenditure, as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made. An expenditure is "any purchase payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). A political committee must also report the name and address of each person who has received a disbursement not otherwise reported, in excess of \$200, together with the date, amount and purpose of any such disbursement. 2 U.S.C. § 434(b)(6)(B)(v); 11 C.F.R. § 104.3(b)(3)(ix). "Purpose" means a brief statement or description of why the disbursement was made. 11 C.F.R. § 104.3(b)(3)(i)(A). Commission regulations expressly hold that the statement "election day expenses" is not a sufficient description for reporting the purpose of a disbursement. 11 C.F.R. § 104.3(b)(3)(i)(B).

Pursuant to 11 C.F.R. § 106.1(c)(2), expenditures for get-out-the-vote drives of committees do not have to be attributed to individual candidates unless those expenditures are made on behalf of a clearly identified candidate, and those expenditures can be directly attributed to that candidate. A candidate is "clearly identified" if the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "your congressman" or "the incumbent," or through an unambiguous reference his or her status as a candidate. See 11 C.F.R. §§ 106.1(d) and 100.17.

In Advisory Opinion 1983-25, the Commission addressed the question of what detail is required in reporting disbursements to a vendor, where that vendor subcontracts some of the work to third parties. The Commission relied on several factors in determining that the committee could meet its reporting obligation by only reporting the disbursements to the vendor, and not itemizing the payments by the vendor to the third parties. Those factors included the fact that the vendor was a corporation, with a legal existence separate and distinct from the operation of the committee; the fact that the firm's principals did not hold any staff positions with the committee; and the fact that the committee had conducted arm's-length negotiations with the vendor and planned to enter into a formal contract.

Pursuant to 2 U.S.C. § 432(h)(1), no disbursement may be made by a political committee in any form other than by check drawn on the committee's account at its designated campaign depository, except for disbursements of \$100 or less from a petty cash fund.

Pursuant to 2 U.S.C. § 441b(a), it is illegal for any corporation to make a contribution in connection with any election for Federal office, or for any political committee to accept any such contribution. The Commission has previously found reason to believe that section 441b(a) has been violated when a non-federal account transfers, and a political committee accepts, funds which

contained corporate money. *See, e.g.,* MUR 2535, *In the Matter of Treen for Congress Committee*; *see also* 11 C.F.R. § 102.6(a)(1)(iv) (which requires that transfers of funds between certain committees be made only with funds which are permissible under the Act).

B. Analysis

The New York Republican Federal Campaign Committee ("the Committee") reported the purpose of six disbursements totaling \$60,000 on its 1994 30-Day Post-General Report as for "election day expenses." The disbursements were made to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, Gregory V. Serio, Luther Mook and the Kings County Republican Committee ("the KCRC").¹ The use of the phrase "election day expenses" is not a sufficient description for reporting the purpose of a disbursement, pursuant to Commission regulations. On March 22, 1995, the Commission's Reports Analysis Division ("RAD") sent a Request for Additional Information ("RFAI") to the Committee, specifically citing the itemization of certain disbursements as being for "election day expenses." The RFAI referred the Committee to 11 C.F.R. § 104.3(b)(3) and asked that the Committee clarify the description.

On April 24, 1995, the Committee filed an amended 1994 30-Day Post-General Report, on which it changed the purpose for the disbursements to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, Gregory V. Serio, Luther Mook and the KCRC. For each of these entries, the Committee now explained the purpose of the disbursements as "GOTV - Travel Expense Reimbursement and Catering Costs." A letter from Jeffrey T. Buley accompanying the amended report stated that "all 'get-out-the-vote' expenditures were generic and party building in nature and, consequently, did not reference any specific United States House or Senate candidate."²

¹ At this time, it is unclear whether the KCRC exists in any substantial capacity. The only evidence regarding the existence of the KCRC the Commission could obtain is its phone number, which was obtained from the Committee.

² Mr. Buley signed the letter as Counsel to the Committee.

On its 1996 30-Day Post-General Report, the Committee used the phrase "election day expenses" to describe the purpose of disbursements totaling \$22,500, which occurred in the days just prior to the 1996 general election.

1. Violations associated with the 1994 30-Day Post-General Report

a. Reporting violations

The Committee initially reported the purpose of six disbursements totaling \$60,000 on its 1994 30-Day Post-General Report as for "election day expenses." The use of the phrase "election day expenses" is not a sufficient description for reporting the purpose of a disbursement, pursuant to Commission regulations. In response to an RFAI from RAD, the Committee revised their report to cite "GOTV - Travel Expense Reimbursement and Catering Costs" as the purpose for these disbursements. A note accompanying the amended report stated that all get-out-the-vote expenditures were generic or party building in nature and did not reference any specific Federal candidate. This last statement was apparently included so as to exclude the possibility that the disbursements at issue were made in connection with an expenditure under 2 U.S.C. § 441a(d).

The Commission does not believe that the amended report resolves the issue of whether the proper purpose of the disbursements to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, Gregory V. Serio, Luther Mook and the entity identified as the KCRC, has been provided. First, information in the Commission's possession suggests that the checks to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, and Gregory V. Serio were cashed and the cash was distributed as "walking around money."

Moreover, according to information in the Commission's possession, at the time of the payments, Ms. Obwald was a secretary-receptionist for the New York State Republican Party, Mr. Dudley was Chairman of the Rensselaer County Republican Party, Mr. Buley was Counsel to the New York State Republican Party, and Mr. Serio was Counsel to the New York Senate Insurance Committee. It appears that the four individuals identified are primarily identified with the Committee

in their professional job capacities and not as campaign activists. Given this information, and the amounts and timing of the disbursements, it does not appear that the current explanation, that the money disbursed to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald and Gregory V. Serio was used for "GOTV - Travel Expense Reimbursement and Catering Costs," is credible.

According to information available to the Commission, Luther Mook has been an activist with the New York Republican Party, being described in a May 1994 newspaper article as "the man who has been charged with bringing Asians into the state Republican Party." Katherine Scobey, *Chinese-Americans Surprise GOP With Their Fervor For Democracy*, SYRACUSE HERALD-J., May 24, 1994 at A4. Nevertheless, given that the purpose for the disbursements to Luther Mook and the KCRC were changed to the exact same explanation, the correctness of those entries is also questionable.

Moreover, it is still possible that the funds in question were used in connection with an expenditure under 2 U.S.C. § 441a(d), the statement of Mr. Buley notwithstanding. The Committee has acknowledged that, in allocating certain amounts of the disbursed funds to federal activity, federal candidates benefited from the disbursements. It is unclear how Mr. Buley could know whether a specific candidate or specific candidates were referenced in the get-out-the-vote effort, as he had apparently passed along the money to others to perform that function. Thus, whether the disbursements were used in connection with an expenditure under 2 U.S.C. § 441a(d) appears to be an open question, as well as whether the disbursements were made to meet an operating expense, or were made for some other reason.

Also, while it is clear that the Committee did not report the proper recipient of the disbursement to the KCRC, it further appears that the Committee has not reported the proper recipients of the disbursements to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, Gregory V. Serio and Luther Mook. If the checks were cashed and the cash was distributed as "walking around money," then the actual recipients of the funds are unknown.

The disbursement of funds to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald and Gregory V. Serio, Luther Mook and the KCRC also places the Committee outside the scope of the requirements outlined by the Commission in AO 1983-25 which permit less detailed reporting. First, the persons to whom the Committee made the disbursements were not corporations. Second, it does not appear that there were arm's-length relationships between the persons and the Committee; indeed, two of the individuals worked directly for the Committee in some capacity, while the other three clearly were involved in the activities of the Committee. The Commission could only locate information regarding the existence of the KCRC by going through the Committee. It is possible that the cash was distributed in amounts of \$200 or more and that, therefore, the Committee should have reported the ultimate recipients of these disbursed funds.

Therefore, there is reason to believe that the New York Republican Federal Campaign Committee and Lewis B. Stone, as treasurer, violated 2 U.S.C. § 434(b)(5)(A), (6)(B)(i), (6)(B)(v) and 11 C.F.R. § 104.3(b)(3)(i), (viii), (ix).

b. Failure to make disbursements from a designated depository

As noted above, there is evidence that the checks provided to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald and Gregory V. Serio were cashed, and that that cash was then distributed to others. Because the Committee has amended its report to provide a similar purpose for the disbursements to Luther Mook and the KCRC, and because the Commission can find no evidence that the KCRC exists as an organization, it is reasonable to assume that their checks were also cashed and the funds distributed to others. As noted above, all disbursements other than petty cash disbursements of \$100 or less must be made by a check drawn on the Committee's account at its qualified campaign depository. It is possible that the cash was distributed in amounts of \$100 or more. Moreover, checks totaling \$60,000 are unlikely to have come from a petty cash account.

Therefore, as a result of the Committee's apparent use of cash rather than the required checks, there is reason to believe that the New York Republican Federal Campaign Committee and Lewis B. Stone, as treasurer, violated 2 U.S.C. § 432(h)(1).

c. Other violations involving the Kings County Republican Committee

As noted above, the disbursement to the KCRC was made on November 9, 1994, the day after the general election, suggesting that the KCRC advanced \$5,000 on behalf of the Committee. According to the Committee's 1994 30-Day Post-General Report, of this amount, \$1,100 was in connection with a federal election. While it is unknown whether the funds which were used were "clean" funds, New York State law allows corporate and labor union contributions. Thus the KCRC may have made, and the Committee may have accepted, a contribution containing such funds.

In addition, the only evidence regarding the existence of the KCRC the Commission could obtain is its phone number. That number is the same number as that of a Brooklyn, New York law firm, Dorn & Associates, P.C. The Dorn and Associates firm, which appears to be the alter ego of the KCRC, has been incorporated in New York since July 1994. Thus, it is possible that the funds advanced on behalf of the Committee by the KCRC were in fact funds of the Dorn & Associates firm.

Therefore, there is reason to believe that the New York Republican Federal Campaign Committee and Lewis B. Stone, as treasurer, violated 2 U.S.C. § 441b(a).

2. Violations associated with the 1996 30-Day Post-General Report

The Committee reported the purpose of eight disbursements totaling \$22,500 on its 1996 30-Day Post-General Report as for "election day expenses." The use of the phrase "election day expenses" is not a sufficient description for reporting the purpose of a disbursement, pursuant to Commission regulations. The Committee was specifically advised by the Commission in March 1995 that the use of the phrase "election day expenses" is insufficient, and directed the Committee's

attention to that portion of the regulations regarding what is necessary to properly report the purpose of a disbursement.

The Commission's standard for determining whether a violation is knowing and willful requires evidence that a respondent acted contrary to the law with an active awareness that he was violating the law. *See, e.g., National Right to Work Committee v. Federal Election Commission*, 716 F.2d 97, 101 (D.C. Cir. 1983).

With regard to the reporting on the 1996 30-Day Post-General Report, the Committee reported the purpose of certain disbursements as being for "election day expenses" in direct contravention of Commission regulations. The Committee was actively aware that it was violating the law in so reporting the purpose, as the Commission had previously informed the Committee specifically about this issue. While it is unclear whether the disbursements were made to meet an operating expense, were made in connection with an expenditure under 2 U.S.C. § 441a(d), or were made for some other reason, the use of the phrase "election day expenses" is improper in reporting the purpose of any disbursements.

Therefore, there is reason to believe that the New York Republican Federal Campaign Committee and Lewis B. Stone, as treasurer, knowingly and willfully violated 2 U.S.C. § 434(b)(5)(A), (6)(B)(i), (6)(B)(v) and 11 C.F.R. § 104.3(b)(3)(i), (viii), (ix).